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September 8, 2003

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**NOTICE OF EX PARTE
COMMUNICATION**

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Implementation of the Pay Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128**

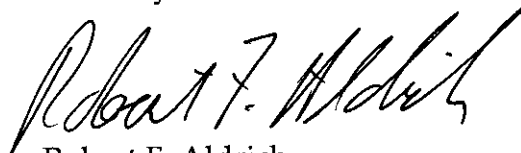
Dear Ms. Dortch:

On September 5, 2003, Albert H. Kramer and Robert F. Aldrich, attorneys for the American Public Communications Council ("APCC"), had a meeting with Gregory Cooke, Deputy Chief of the Competition Policy Division, Wireline Competition Bureau, and Jack Yachbes of the Division staff.

We discussed APCC's views of record on who should be responsible for paying compensation for calls routed to switch-based resellers ("SBRs").

The matters discussed are summarized in the enclosed material which was provided to the staff at the meeting.

Sincerely,



Robert F. Aldrich

Enclosures

cc: Gregory Cooke
Jack Yachbes

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APCC'S RESPONSE TO IXCS' POSITIONS ON THE "TOLLGATE" ISSUE

♦ The IXCs' positions contradict one another

- AT&T and Sprint complain that the current FIXC-pays system imposes excessive costs and "impossible" burdens on FIXCs by requiring FIXCs to ensure that SBRs cooperate with FIXCs in accurately tracking and compensating PSPs for "completed" payphone calls.
 - AT&T complains that the FCC's current FIXC-pays rule impose an "impossible" burden on FIXCs (AT&T *ex parte* at 2) because FIXCs:
 - "must rely on SBRs" to determine call complete" (*id.*), and
 - "generally ha[ve] been unable to collect adequate call completion data from SBRs" (*id.*); and
 - SBR call completion "often does not match" the FIXC's information (*id.* at 3).
 - Sprint makes similar claims (see Sprint *ex parte*, 4th page)

- MCI, on the other hand, contends that a SBR-pays rule would *NOT* impose excessive costs or burdens on PSPs or the Commission, because PSPs and the Commission can rely on “Third Party Verification Procedures” to ensure reliable SBR tracking and reporting of completed payphone calls. MCI *ex parte* at 1.
 - MCI offers a laundry list of criteria that it claims could be effectively applied by a “big 5” accounting firm to provide adequate assurance of accurate SBR tracking, reporting, and compensation systems.
 - This contradicts the claims of AT&T and Sprint that there is no reasonable method for FIXCs to ensure accurate completed call reporting by SBRs.
 - ALL of the verification criteria detailed by MCI could also be employed by FIXCs to ensure reliable SBR tracking and reporting of completed calls under a FIXC-pays system.
 - MCI’s list of criteria is simply a list of criteria that FIXCs should already be insisting that SBRs comply with for their completed call data to be accepted by the FIXC.

- No matter which group of IXC's is "right," the ~~current~~ rule should be retained.
 - Even if AT&T and Sprint are correct ~~that~~ it is costly and burdensome to require FIXCs to ensure accurate SBR reporting of completed calls, then it would be even **more** costly and burdensome for PSPs and the Commission to perform that task.
 - PSPs have no ability to review SBRs' call tracking systems to ensure compliance with MCI's criteria
 - If MCI is correct that third party verification procedures can be effectively applied to police SBR tracking systems, it is nevertheless true that IXC's are in by far the best position to perform that task:
 - Unlike PSPs, FIXCs have a business relationship with SBRs and can use market mechanism to require their customers to demonstrate adequate tracking systems satisfying MCI's criteria.
 - No other party has this ability.
- FIXCs must have an incentive to police their customers' systems. Only the current rule provides this incentive by making FIXCs liable for accurate compensation of PSPs for SBR calls.

♦ **APCC Has Previously Rebutted the IXC's Other Arguments**

- Neither the statute nor the case law precludes the FCC from selecting the compensation payer based on promoting payphone deployment and fairness to PSPs.
- Ultimate criteria for selecting compensation payer is not “primary economic beneficiary” – it is how to ensure that PSPs are fairly compensated “for each and every completed . . . call.”
 - Issues are who is best situated to be held responsible for paying compensation on SBR calls and who is best situated to ensure compensation recovery from the SBRs.
 - “Overcompensation” is not the problem – in fact, major FIXCs *concede* there was a *shortfall* under SBR-pays rule.
 - To the extent relevant, efficiency considerations favor FIXC-pays rule.